

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

April 6, 1998

LB 422, 1266

amendment to a bill Senator Matzke had that dealt with the death penalty which prohibited the death penalty to be used on those individuals who are mentally retarded. The amendment was adopted, the bill was on Final Reading, and the difficulty we had at that time was that there had been no underlying bill or hearing on the topic. And so that bill was held over, LB 426... (LB) 422, it was held over and is now pending on Final Reading and we wanted to have a bill introduced and a hearing held on this topic and that is what we bring to you today, LB 1266. The hearing on that measure was I think very, very strong in support of the legislation and the bill did come out of the Judiciary Committee very, very strong with some committee amendments which will be coming up. And our feeling is that we should proceed in the passage of this law and prohibit the use of the death penalty on those individuals who have mental retardation. We heard the arguments last year. The majority supported that. And let me reiterate once again the concerns we have and then I'm going to give time to Senator Hilgert. But clearly we already prohibit the death penalty for persons under the age of 18. That's currently the law. One of the thoughts is at that youthful age the maturity makes it difficult to have the judgment to know fully what you're doing. Is it any more difficult for that situation than it is for an individual who has an IQ below 70, thus being mentally retarded? And the feeling is obviously not. The mental capacity as individuals makes it very difficult for them to understand the rightness and wrongness of what they do, the consequences of their actions. It is already a mitigating circumstance that can be used in the sentencing process. But the thought that somebody who is mentally retarded with that sort of limitation of the mental capacity should be subject to the most severe punishment, that being the death penalty, is something that is objectionable to those of us who support this measure. Obviously, there's punishment that is appropriate. That punishment would obviously be life imprisonment. That sentence would appropriately protect the public from these individuals and deal the punishment that people find necessary. But at the same time, the same time the possibility that someone would receive the death penalty who is mentally retarded is a repugnant situation to those of us who understand what that means. Mental retardation is a developmental disability. Mental capacity is impaired from youth typically and that capacity then leads to difficulty in